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EXAMINER	
DANIELS, MATTHEW J	
ART UNIT	PAPER NUMBER
1791	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/701,052	BYRNE, CHARLES A.	
	Examiner	Art Unit	
	MATTHEW J. DANIELS	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-5 and 7-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-5 and 7-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Rejections over Boyer

1. **Claims 1, 5, 14, 16, 28, and 29** are rejected under 35 U.S.C. 103(a) as obvious over Boyer (US 2943969). **As to Claims 1 and 14**, Boyer teaches a method for manufacturing an article which could be used as an animal chew toy comprising providing first and second layers of rubber, which may be tire rubber (1:17), and a synthetic fiber mesh in a general shape and size of the article, placed between the layers of rubber (Fig. 1), and molding the sheets of rubber and synthetic fiber mesh in a mold (2:53-71). Boyer teaches cutting of the reinforcement when already placed between the sheets of rubber (2:10-15). However, it would have been obvious to also place a cut sheet of reinforcement between two rubber layers since doing so merely involves a rearrangement in the order of performing the steps of placing and cutting. Boyer teaches one "mold" (2:55), however, it is submitted that item 20 acts as a second opposing mold which participates in forming the reinforced rubber into a plate (2:53-65). **As to Claims 5 and 16**, the fabric of Boyer is nylon (2:30-33). **As to Claims 28 and 29**, the article of Boyer is a disk (Figures), which could be flown.

2. **Claims 21 and 30** are rejected under 35 U.S.C. 103(a) as obvious over Boyer (US 2943969) in view of Kraus (US 2984281). **As to Claim 21**, Boyer teaches a method for manufacturing an article which could be used as an animal chew toy comprising providing first and second layers of rubber, which may be tire rubber (1:17), and a nylon fiber mesh (2:30-33) in a shape and size of the article, placed between the layers of rubber (Fig. 1), and molding the sheets of rubber and synthetic fiber mesh in a mold (2:53-71). Although Boyer does not specifically teach cutting of the fiber mesh or rubber, it is submitted that these aspects of the invention would have been inherent in that individual sheets of the different materials are used. In the alternative, cutting is an obvious process for providing a discontinuous sheet. Although Boyer only teaches one "mold" (2:55), it is submitted that a second opposing mold is inherent in that the material is subsequently formed into a plate (2:53-65).

Boyer is silent to the carbon black in the rubber. However, Kraus teaches that it is known to incorporate carbon black in the rubber material (1:25). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Kraus into that of Boyer since carbon black gives tires their color, and because Boyer provides an article meant to be used to repair tires (1:17), therefore one would have incorporated carbon black to provide a tire patch matching the tire. **As to Claim 30**, the article of Boyer is a disk (Figures), which could be flown.

Rejections over Kraus and Oswald

3. **Claims 1, 3, 5, 9, 10, 12, 13, 26, and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (US 4830781). **As to Claim 1**, Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first and second layers of rubber material formed in a general shape and size of the animal chew toy (2:20);

molding the sheets of rubber into an article which could be used as an animal chew toy (2:21-35);

wherein the molding step includes the steps of compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31).

Kraus does not explicitly teach the use of a floss material comprising a mesh molded between the two sheets.

However, Oswald teaches that it is conventional to mold a fiber mesh material between two sheets in a tire (Fig. 2, items 18, 14, 33, 26). The fiber mesh is inherently a mesh fabric sheet and would inherently act as a floss.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Oswald into that of Kraus because Oswald teaches that the material would provide reinforcement to the tire and the many beneficial effects which such reinforcement would provide.

As to Claim 3, this claims read on the tire of Kraus (2:25, 2:51). **As to Claim 5**, see Oswald, 4:62-66. **As to Claims 9 and 10**, the inflatable bladder of Kraus (20), is inherently a

buoyant insert associated with the tire. **As to Claim 12**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. **As to Claim 13**, the tire of Kraus and Oswald does not include metal imbedded therein when the nylon or polyester material of Oswald is used (4:60-67). Although silent to the particular size tire now claimed, size of the resulting article is not generally a patentably distinguishing feature, and one of ordinary skill would have found it obvious to provide the claimed tire size for use on motorized scooters and bikes made for young children. **As to Claims 26 and 28**, the configuration of the Kraus tire meets the claimed configuration and is in the shape of a disk.

4. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Spross (USPN 1596071). Kraus and Oswald teach the subject matter of Claim 1 above under 35 USC 103(a). **As to Claim 7**, Kraus and Oswald are silent to the rope. However, it is conventional to tie a rope to a tire. This type of apparatus is used for swings, and is demonstrated at least by Spross (Figures and Page 1, line 55). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Spross into that of Kraus because Spross explicitly suggests the method for use with tires (Page 1, line 56).

5. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Eby (USPN 3728749). Kraus and Oswald teach the subject matter of Claims 1 above under 35 USC 103(a). **As to Claims 9-11**, Kraus and Oswald are silent to the buoyant foam insert. However, Eby

teaches that it is conventional to provide foam in a tire for use as a tire float (entire document). It is submitted that it is inherent that the foam is closed cell in order that it provides a floating effect, according to Eby's requirement. Although Eby appears to disclose foaming in the tire, it would have also been obvious to rearrange the order of these process steps by prefabricating the insert and placing it in the tire to provide the same effect. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Eby into that of Kraus and Oswald in order to provide a use for old tires in order to avoid disposal costs and architectural eyesores in the form of junkyards.

6. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Ogura (USPN 4098214). Kraus and Oswald teach the subject matter of Claims 1 above under 35 USC 103(a). **As to Claims 9-11**, Kraus and Oswald are silent to the buoyant foam insert. However, Ogura teaches that it is conventional to provide closed cell foam in a tire for use as a tire float (2:26). The porous material is packed into the tire (4:9-10). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Ogura into that of Kraus and Oswald in order to provide a use for old tires in order to avoid disposal costs and disposal in landfills.

7. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Hartnett (US 2002/0111412). Kraus and Oswald teach the subject matter of Claim 1 above under 35 USC

103(a). **As to Claim 12**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. In the alternative, however, Hartnett teaches that it is known to provide an odor masking agent, such as vanilla extract, to a mixture to be molded and vulcanized (Abstract). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Hartnett into that of Kraus because Hartnett specifically suggests the method for use with vulcanizable elastomer rubbers ([0016]), and doing so would improve the scent of the article of Kraus, which is comprised of a vulcanizable elastomeric rubber.

Rejections over Kraus, Riehl, and Wallace

8. **Claims 14-16, 20, 21, 25, 27, and 29-31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830). **As to Claim 14**, Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first (23) and second layers (24) of rubber material formed in a general shape and size of the animal chew toy (2:20);

molding the sheets of rubber into an article which could be used as an animal chew toy (2:21-35);

compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31) to mold the materials.

Kraus does not explicitly teach (a) the use of a floss material comprising a mesh molded between the two sheets, (b) "cut" tire rubber material and "cut" synthetic fiber mesh.

However, Riehl teaches that it is known to provide a tread portion which is cut and spliced (6:71-73). Wallace teaches that it is known to provide a bias-cut reinforcing material between layers in a tire (2:28-53).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Riehl and Wallace into that of Kraus because (a) Kraus teaches or suggests a tread portion, and Riehl provides a conventional for manufacturing and assembling the tread, and (b) reinforcement material would have obviously been desirable and applicable in the Kraus process since it would help prolong tire lifetime and reduce blowouts.

As to Claim 15, this claim reads on the tire of Kraus (2:25, 2:51). **As to Claim 16**, see Wallace, col. 2, line 29. **As to Claim 20**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents.

As to Claim 21, Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first (23) and second layers (24) of rubber material mixed with carbon black (2:51) formed in a general shape and size of the animal chew toy (2:20);

compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31) to mold the materials.

Kraus does not explicitly teach (a) the use of a floss material comprising a nylon or polyester mesh molded between the two sheets, (b) "cut" tire rubber material and "cut" synthetic fiber mesh.

However, Riehl teaches that it is known to provide a tread portion which is cut and spliced (6:71-73). Wallace teaches that it is known to provide a bias-cut reinforcing material between layers in a tire (2:28-53) which may be nylon (2:29).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Riehl and Wallace into that of Kraus because (a) Kraus teaches or suggests a tread portion, and Riehl provides a conventional for manufacturing and assembling the tread, and (b) reinforcement material would have obviously been desirable and applicable in the Kraus process since it would help prolong tire lifetime and reduce blowouts.

As to Claim 25, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. **As to Claims 27,** the combined tire of Kraus, Riehl, and Wallace would obviously have a generally U-shaped cross section, a tread design, spaced apart sidewalls extending inwardly, a centrally aligned aperture. When the nylon or polyester of Wallace are selected, it would have been obvious to provide an article which is devoid of metal. **As to Claims 29-31**, in the combination of Kraus, Riehl, and Wallace, the references provide a tire with a U-shaped cross section reinforced with nylon compressed into a tire configuration. The tire disclosed by Kraus would obviously have a tread design and a disk configuration (which could fly), and there is no disclosure of metal in the Kraus process.

9. **Claims 17 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Spross (USPN 1596071). Kraus, Riehl, and Wallace teach the subject matter of Claims 14

and 21 above under 35 USC 103(a). **As to Claims 17 and 22**, Kraus is silent to the rope. However, it is conventional to tie a rope to a tire. This type of apparatus is used for swings, and is demonstrated at least by Spross (Figures and Page 1, line 55). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Spross into that of Kraus because Spross explicitly suggests the method for use with tires (Page 1, line 56).

10. **Claims 19 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Eby (USPN 3728749). Kraus, Riehl, and Wallace teach the subject matter of Claims 14 and 21 above under 35 USC 103(a). **As to Claims 19 and 24**, Kraus is silent to the buoyant foam insert. However, Eby teaches that it is conventional to provide foam in a tire for use as a tire float (entire document). It is submitted that it is inherent that the foam is closed cell in order that it provides a floating effect, according to Eby's requirement. Although Eby appears to disclose foaming in the tire, it would have also been obvious to rearrange the order of these process steps by prefabricating the insert and placing it in the tire to provide the same effect. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Eby into that of Kraus in order to provide a use for old tires in order to avoid disposal costs and architectural eyesores in the form of junkyards.

11. **Claims 19 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view

of Ogura (USPN 4098214). Kraus, Riehl, and Wallace teach the subject matter of Claims 14 and 21 above under 35 USC 103(a). **As to Claims 19 and 24**, Kraus is silent to the buoyant foam insert. However, Ogura teaches that it is conventional to provide closed cell foam in a tire for use as a tire float (2:26). The porous material is packed into the tire (4:9-10). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Ogura into that of Kraus in order to provide a use for old tires in order to avoid disposal costs and disposal in landfills.

12. **Claims 20 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Hartnett (US 2002/0111412). Kraus, Riehl, and Wallace teach the subject matter of Claims 14 and 21 above under 35 USC 103(a). **As to Claims 20 and 25**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. In the alternative, however, Hartnett teaches that it is known to provide an odor masking agent, such as vanilla extract, to a mixture to be molded and vulcanized (Abstract). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Hartnett into that of Kraus because Hartnett specifically suggests the method for use with vulcanizable elastomer rubbers ([0016]), and doing so would improve the scent of the article of Kraus, which is comprised of a vulcanizable elastomeric rubber.

Rejections over Kahnweiler and Sonett

13. **Claims 1, 8, 9, 14, 18, and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahnweiler (US 1534964) in view of Sonnett (US 2495079). **As to Claims 1 and 14**, Kahnweiler teaches forming an animal toy which may be chewed comprising molding rubber or fiber into the shape of a toy. Kahnweiler is silent to the steps of providing two sheets of rubber, placing floss material between the layers, and compressing under pressure and heat. However, Sonnett teaches providing alternating layers of textile and rubber (2:8-13), and molding the sheets by compressing the rubber and textile material under heat and pressure (2:10-13). It would have been obvious to provide the materials of Sonnett in a cut configuration in order to conform to the desired ball shape. With respect to the opposing mold members, since the desired shape of Sonnett is that of a ball, it is submitted that use of two opposed molds would have been obvious, and in the alternative, the carcass (2:11) acts as one mold member.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Sonnett into that of Kahnweiler because (a) Kahnweiler suggests both rubber and fiber, which Sonnett provides, and (b) the improvement of Sonnett, namely texturing of the surface and use of reinforcement materials, would have had obvious applicability to the Kahnweiler article, and one would have found it obvious to incorporate these aspects of the Sonnett process into that of Kahnweiler in order to reinforce the article, providing an enhanced toy lifetime.

As to Claims 8 and 18, the catnip of Kahnweiler constitutes a treat placed and retained in the cavity of the toy (page 1, lines 41-46). **As to Claims 9 and 19**, it is submitted that the mouse of Kahnweiler, which is cloth and hollow (page 1, lines 47-55), is bouyant.

14. **Claims 12 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahnweiler (US 1534964) in view of Sonnett (US 2495079), and further in view of Hartnett (US 2002/0111412). Kahnweiler and Sonnet teach the subject matter of Claims 1 and 14 above under 35 USC 103(a). **As to Claims 12 and 20**, Kahnweiler is silent to a scent in the rubber. However, Hartnett teaches that it is known to provide an odor masking agent, such as vanilla extract, to a mixture to be molded and vulcanized (Abstract). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Hartnett into that of Kahnweiler because Hartnett specifically suggests the method for use with vulcanizable elastomer rubbers ([0016]), and doing so would improve the scent of the article of Kahnweiler, which is comprised of a vulcanizable elastomeric rubber.

Response to Arguments

15. Applicant's arguments filed 8 April 2008 have been fully considered but they are not persuasive or are moot in view of the new grounds of rejection set forth above. The arguments appear to be on the following grounds:

a) The methodology used in Oswald is significantly different than the methodology of the present invention. Oswald provides a continuous cord strand, which is interleaved and woven into a zig-zag pattern. This process is significantly more complicated and expensive than the present invention. The combination fails to disclose pre-cut sheets or rubber material and fiber mesh which are layered and subsequently molded.

b) The present invention is an animal chew toy having a diameter between six and ten inches. The Kraus and Oswald references are clearly directed to tires for vehicles, and as such, are not analogous to the animal chew toy field, and fail to disclose the particular size.

c) Spross is non-analogous to the present invention.

d) There is no motivation for the combination of McClung, III with Kraus and Oswald, and the combination is based on impermissible hindsight.

e) Ogura is non-analogous to the present invention.

f) New claims have been added.

16. These arguments are not persuasive or moot for the following reasons:

a) It is noted that this argument is inapplicable to Claim 1 which does not recite the cutting of any of the layers. Claims 14 and 21 recite steps of providing, placing, and compressing, but do not particularly recite steps of cutting the rubber or reinforcement. It is submitted that the materials of Kraus and Oswald would have configurations substantially the same as "cut" pieces. Nevertheless, the rejections have been revised to reflect the cutting of rubber and mesh reinforcement, which Applicants assert to be the distinguishing features.

b,c,e) The Examiner respectfully disagrees that the cited references are non-analogous. The article of this invention appears very similar to an automobile tire other than its small size and optional tread design. However, size and artistic elements are not distinguishing in this case since many different sizes of treaded tires are conventional. Applicants provide no support for their position that Kraus and Oswald are limited solely to passenger vehicles. In particular, the method or article of Kraus does not appear to be limited to any particular use or size. Where the

article resulting from the claimed process reads on a tire, it is submitted that the analogous inquiry would lead to the conclusion that other patents directed to tires and uses for tires would be within the same field of endeavor and/or pertinent to the particular problem.

d) This rejection has been reconsidered and is withdrawn. See the new rejections above.

f) The new claims fail to distinguish the claimed invention from a tire, as disclosed by Kraus and Oswald, or from the various articles disclosed by Kahnweiler and Boyer, as set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. DANIELS whose telephone number is (571)272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew J. Daniels/
Primary Examiner, Art Unit 1791
7/21/08